

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN EMPLOYMENT RELATIONS COMMISSION

FACT FINDING

In The Matter of the Fact Finding Between:

GENESEE COUNTY COMMUNITY
MENTAL HEALTH

MERC Case No. D09 E-0676

—and—

TEAMSTERS LOCAL 214

**FACT FINDER'S REPORT:
FINDINGS OF FACT AND RECOMMENDATIONS**

FOR GENESEE COUNTY COMMUNITY
MENTAL HEALTH:

Appearances:

Raymond E. Knott, Labor Consultant

Also Present:

Sheila D. Mason, Human Resources Director

FOR TEAMSTERS LOCAL 214:

Appearances:

Les Barrett, Business Representative

Also Present:

Darlene Simonds, Chief Steward

Marsha Marble, Steward

John Matus, Steward

Michelle Mayer, Steward

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GENERAL BACKGROUND

The Genesee County Community Mental Health (hereinafter "GCCMH" or "the Employer") is an agency of Genesee County that provides mental health services to citizens of Genesee County. GCCMH employs 309 employees, 226 of which are represented by two unions. Teamsters Local 214 (hereinafter "the Teamsters" or "the Union") represents 76 professional mental health employees. Michigan AFSCME Council 25 represents 150 mental health workers and support staff employees. The remaining 83 employees are not represented by any union.

GCCMH and the Teamsters were parties to a collective bargaining agreement dated 2006 through 2009, which had a termination date of September 30, 2009. The parties began negotiating a successor to the Agreement in September 2009. Despite the assistance of a mediator, the parties have been unable to resolve all the outstanding issues. GCCMH filed a Petition for Fact Finding on June 28, 2010, and the Teamsters filed a Petition for Fact Finding on July 7, 2010. On August 19, 2010, the undersigned was appointed by the Michigan Employment

Relations Commission to hold a hearing, determine the facts and to issue a report and recommendations on the matter. A preliminary prehearing conference was held by telephone conference call on September 27, 2010. This Fact Finder conducted a hearing on November 8, 2010, in Genesee County, Michigan at which opening statements were made and numerous exhibits were received. Both parties filed post-hearing briefs and the record was declared closed on December 20, 2010, when the last of these was received.

At the hearing and in their subsequent briefs, the parties identified the open and unresolved issues¹ between the parties as follows:

Article VI, Section 3-Grievance Procedure
Article XVIII- Hospital/Medical Insurance, Dental and Optical (for Active Employees)
Section A: Base Plan
Section G: HSA Funding
Article XXXIII- Salary Rates

DECISION-MAKING CRITERIA

Fact Finding cases are conducted pursuant to Section 25 of the Labor Mediation Act 176 of 1939, as amended, MCL 423.25, and in accordance with the provisions of R 423.131 of the General Rules of the Michigan Employment Relations Commission. The Act does not provide for any specific criteria to be used in evaluating the positions of the parties or the basis for a Fact Finder's recommendation. Consequently, many Fact Finders choose to apply the criteria set forth in Section 9 of Act 3 12 of 1969, as amended, MCL 423.239:

- (a) *The lawful authority of the employer.*
- (b) *Stipulations of the parties.*
- (c) *The interests and welfare of the public and the financial ability of the unit of government to meet those costs.*
- (d) *Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:*
 - (i) *in public employment in comparable communities.*
 - (ii) *in private employment in comparable communities.*
- (e) *The average consumer prices for goods and services, commonly known as the cost of living.*
- (f) *The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.*

¹ Although the Petitions for Fact Finding identified additional open and unresolved issues, the parties have since reached agreement on the issues that are not listed here.

- (g) *Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.*
- (h) *Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.*

Some of the criteria listed here will be considered in order to find facts and make recommendations to the parties regarding what the parties could reasonably expect to have negotiated.

EXTERNAL COMPARABLES

Both parties offered Clinton/Eaton/Ingham Community Mental Health as a comparable employer. In addition, GCCMH offered Saginaw County Community Mental Health and Macomb County Community Mental Health as external comparables. It also suggested its own collective bargaining agreement with Michigan AFSCME Council 25, Local 496, and the terms and conditions of employment for its non-union employees as internal comparables. The Teamsters also propose the St. Clair County Community Mental Health Authority as a comparable employer, specifically its contract with Michigan AFSCME Council 25.

GCCMH contends that its proposed comparables were utilized by both parties in the 2004 and 2006 Fact Finding proceedings. It states that all three external comparables it proposes are within a seventy-five mile radius of Genesee County, and are the largest Community Mental Health Agencies providing direct client services.² GCCMH proposes that the current working conditions of its other unionized and nonunionized employees should be considered as a comparable. GCCMH explains that in light of current financial restraints, it has been forced to reduce salary and fringe benefit costs for its other employees, particularly with respect to hospital/medical insurance premiums.

Given the current economic climate, internal comparables are likely more relevant than external comparables. The working conditions of other GCCMH employees may offer a more realistic view of what this employer can likely agree to than do those of other agencies' employees, where the level of funding cuts, etc., may be vastly different.

ISSUES IN DISPUTE

Currently, there are three issues identified by the parties as still in dispute. All other remaining issues have been resolved by tentative agreement and are hereby incorporated into this Recommendation.

² Kent County, Oakland County, and Wayne County while larger, contract out client services.

ARTICLE VI-GRIEVANCE PROCEDURE (§ 3, STEP IV (g))

The current language: The Arbitrator shall have no power to add to, subtract from, or modify, any of the terms of this Agreement. Neither shall he or she have power to establish or change any classification wage rate, to rule on any claim arising under an Insurance Policy or Retirement Claim or dispute, or to issue a ruling modifying any matter covered by a Statute or Ordinance.

The Employer proposes retaining the current language of the collective bargaining agreement. The Union proposes modifying Article VI to allow employees to arbitrate claims that the Employer has modified negotiated benefits in pension and health care. It proposes that Article VI, § 3, Step IV(g) be modified to read as follows:

The Arbitrator shall have no power to add to, subtract from, or modify, any of the terms of this Agreement. Neither shall he or she have power to establish or change any classification wage rate, to rule on any claim arising **from an employee dealing with a specific coverage to be received under an insurance policy or the calculation of a retirement benefit to be received by a specific employee**, or to issue a ruling modifying any matter covered by a Statute or Ordinance. (modification shown in bold).

The Teamsters say the current language in the collective bargaining agreement is “outdated.” GCCMH has tried to change its retirees’ health care benefits and the affected employees were forced to file a claim in circuit court. Although they initially tried to resolve the issue in arbitration, the arbitrator found the issue to be nonarbitrable based on Article VI.³ The Teamsters contend that if the parties could resolve future issues in arbitration, they would expend less public money. The Teamsters point out that none of the comparables require that a claim of a violation of negotiated pension or health care benefits be resolved in court rather than arbitration. The Teamsters are not proposing to change the language as it pertains to the policies, procedures, and implementation of an insurance policy or the retirement system in general, “but rather to allow those issues [to be arbitrated] which have been negotiated into the contract as it affects the benefits to be enjoyed by the retired members of the bargaining unit.”

GCCMH proposes that the current language be retained, pointing out that it has been in the collective bargaining agreement between Genesee County and its unions for approximately 35 years, and that the same language appears in all the collective bargaining agreements today. GCCMH says that the Teamsters’ proposed language is internally inconsistent because all pension benefits and claims are specifically matters covered by the Genesee County Employees Retirement Ordinance.⁴ Finally, it argues that various insurance policies preclude it from submitting these kinds of disputes to a labor arbitrator.

Recommendation: It is recommended that the parties retain the current language of Article VI. The Teamsters seek to arbitrate claims by retirees, but the proposed language addresses only claims by employees. It is recommended that the parties resolve in arbitration claims by employees regarding a specific coverage to be received under an insurance policy or the calculation of a retirement benefit to be received by a specific employee, but not claims covered by the Retirement Ordinance, or for which another forum must be used for resolution.

³ Exhibit 4.

⁴ Exhibit 116.

ARTICLE XVIII-HOSPITAL/MEDICAL INSURANCE (ACTIVE EMPLOYEES)

Base Plan

GCCMH proposes the following Hospital and Medical Insurance plans for its active employees:

Section 1-Effective January 1, 2010 – December 31, 2010

A. HealthPlus HDHP Benefit Summary 10

- Agency will fund **maximum** annual deductible into a Health Savings Account (HSA).
- The 2010 amount shall be:

Single	\$1,250
Double	\$2,500
Family	\$2,500
- Employee will be responsible for co-insurance/co-pay cost, if incurred, up to a maximum out of pocket of \$1,000, of which the agency will reimburse the employee up to \$500 with proof of billed services.

B. BCN 5

- \$15/\$30 Prescription Drug Co-Pay
- \$20 Office Visit Co-Pay
- \$100 Emergency Room (w/o admit) Co-Pay
- \$50 Urgent Care Visit Co-Pay

C. Blue Cross/Blue Shield Flex Blue Plan

- Agency will fund **maximum** annual deductible into a Health Savings Account (HSA).
- The 2010 amount shall be:

Single	\$1,250
Double	\$2,500
Family	\$2,500
- Employee will be responsible for co-insurance/co-pay cost, if incurred, up to a maximum out of pocket of \$1,000, of which the agency will reimburse the employee up to \$500. The Agency will reimburse the first \$500 with proof of billed services.
- Employee will be responsible for co-insurance/co-pay cost, if incurred, up to a maximum out of pocket of \$2,000, for double/family coverage, of which the agency will reimburse the employee up to \$1,000. The Agency will reimburse the first \$1000 with proof of billed services.

Effective January 1, 2011-September 30, 2011

D. HealthPlus HDHP Benefit Summary 10

- Agency will fund **maximum** annual deductible into a Health Savings Account (HSA).
- The 2010 amount shall be:

Single	\$1,250
Double	\$2,500
Family	\$2,500
- Employee will be responsible for co-insurance/co-pay cost, if incurred, up to a maximum out of pocket of \$1,000, of which the agency will reimburse the employee up to \$500 with proof of billed services.

E. BCN 5

- \$15/\$30 Prescription Drug Co-Pay
- \$20 Office Visit Co-Pay
- \$100 Emergency Room (w/o admit) Co-Pay
- \$50 Urgent Care Visit Co-Pay

F. Blue Cross/Blue Shield Flex Blue Plan

- Agency will fund **maximum** annual deductible into a Health Savings Account (HSA).
- The 2010 amount shall be:

Single	\$1,250
Double	\$2,500
Family	\$2,500
- Employee will be responsible for co-insurance/co-pay cost, if incurred, up to a maximum out of pocket of \$1,000, for single coverage, \$2,000 for double and family.

In addition, GCCMH proposes that those employees who would be covered by the HealthPlus HMO HDHP Benefit plan be required to pay ten percent of the premium costs through payroll deduction. At the January 2, 2011 premium rates, the bi-weekly deduction would be as follows:

Single	\$38.18
Double	\$79.42
Family	\$90.49

The Teamsters propose the following Hospital and Medical Insurance plans for active employees:

Section A – Make HealthPlus HD PPO plan the base plan.

- Employees may select Blue Care Network 5 or Flex Blue 2 as options. If the rates are higher than the base plan, the employee will be responsible for paying the difference in monthly premiums.

GCCMH explains that it can no longer afford to pay the monthly premiums associated with the Blue Cross/Blue Shield Flex Blue 2 health care plan provided under the expired collective bargaining agreement with the Teamsters. It points out that neither the AFSCME members nor its unrepresented employees have this type of coverage. GCCMH asserts that premium costs for this plan have risen 110.48% in the last two years.⁵ Under this plan, the Teamsters' members pay no deductibles, no medical co-pays, no coinsurance, and no prescription co-pays. GCCMH states that the additional cost of providing this health insurance plan to the Teamsters' members was more than \$249,500 in 2010, and is projected to be \$622,504 in 2011.

GCCMH asserts that the cost savings claimed by the Union if it were to allow employees to continue to use HealthPlus HDPPPO are not supported by its proposal or exhibits. Instead, GCCMH asserts that the premium costs for the prior plan have increased 36.5% for single coverage, 30.6% for double coverage, and 21.8% for full family coverage from 2005 to the present. GCCMH offers the following for comparison:

2011	Single	Double	Family
Employer-proposed base plan	\$486.00	\$1002.51	\$1113.23
Union-proposed base plan	\$555.01	\$1138.18	\$1241.06
Difference in Cost	14.2%	13.5%	11.5%

GCCMH proposes that the Teamsters' members receive the same hospital/medical insurance coverage currently received by AFSCME members and the non-union employees: HealthPlus HMO HDHP Benefit Summary 17YK.⁶ Having all of its employees covered under the same base plan would reduce GCCMH's administrative costs, and may allow it to obtain a lower monthly premium based on a larger number of employees being covered. Furthermore, GCCMH asserts that the Teamsters' members are not entitled to better-or worse-coverage than that received by its other employees.

GCCMH argues that it would be fairer for the Teamsters' members to pay the same coinsurance/copay costs paid by its AFSCME and non-union employees, up to the maximums proposed. If employees want to "buy up" from the high deductible plan, they can do so through payroll deduction of the difference in premium costs, as do other GCCMH employees. GCCMH asserts that prior to 2002, all its employees had the same hospital/medical coverage, and that since the Teamsters' members have had different coverage, it has proposed covering them all under the same plan.

It asserts that if the employees paid ten percent of the premium costs in 2011, and going forward, that this benefit would be comparable to that enjoyed by the employees of the Clinton/Easton/Ingham Community Mental Health, who also pay ten percent of their employer's premium costs. GCCMH asserts that the Teamsters are wrong when they contend that these employees enjoy fully-paid health care. In addition, this amount is less than that paid by employees of Saginaw County, who pay 10% to 17% of the premium costs.

⁵ Exhibit 118.

⁶ Exhibit 120.

The Teamsters assert that it has assisted GCCMH in trying to control health care costs over the past three collective bargaining agreements. The Teamsters assert that its members have incurred upheaval each time the health care coverage is changed, making consistency in treatment difficult. The Teamsters explain that its proposal will allow costs-savings to GCCMH without requiring its members to change doctors again.

The Teamsters contends that its proposal allows GCCMH to pay premium rates at a level it paid prior to 2005. It also suggests that the excess savings would allow GCCMH to pay the wage increases it has proposed. The Teamsters contend that the health care plans provided by the external comparables are much more expensive than that proposed by GCCMH, despite the fact that they are smaller units with smaller budgets. The Teamsters point out that on November 8, 2010, GCCMH gave notice that it intended to unilaterally change its members' health care coverage, effective January 1, 2011,⁷ making its members change doctors again.

Recommendation: It is recommended that the parties amend Article XVIII to adopt the Hospital/Medical Insurance Plan proposed by GCCMH. GCCMH has asserted that it will save money by grouping all of its employees into the same pool, and the plans it offers still give the Teamsters' members several options to address their concerns over switching doctors, etc. The Teamsters did not adequately demonstrate that the cost savings it predicted would be possible with the plan it proposed, or why it should have a hospital/medical insurance plan that offers greater benefits or lower costs to the employees than that enjoyed by other GCCMH employees.

ARTICLE XVIII-HOSPITAL/MEDICAL INSURANCE (ACTIVE EMPLOYEES)

HSA Funding

GCCMH proposes the following provisions with respect to HSA funding:

G. HSA Funding

If a high deductible plan is selected, Agency will contribute to an employee owned and managed HSA.

- HSA will be established through HSA Bank or Gilmore Bank, unless the Union selects another bank, with the understanding that the entire membership must be enrolled in the same and that Union selection will be in writing on or before November 1, 2009. If no selection is made, the Employer will establish HSA at HSA bank for members.
- Agency deductible deposit is contingent on individual staff having an open and active HSA account.
- Employee responsible for all maintenance costs and fees associated with their health savings plan and account.
- Any remaining dollars, in the HSA account, at the end of the plan year will remain with the employee to be used as allowed by IRS rules (currently for many healthcare related expenses).
- The Agency will allow pretax contributions as directed by the employee subject to IRS rules.

⁷ Exhibit 1 to the Union's post-hearing brief.

- Agency will make the full year's deductible deposit at the beginning of the plan year, for eligible employees. Historically deposits, after employee establishes their HSA account, take 30-60 days to be available.
- Employees hired mid plan year will have their annual deductible contribution prorated based on the remaining months in the plan year; once new employee is **eligible** for healthcare. For example, if a new employee is **eligible** for health care coverage on September 1, 2010, and is selecting family coverage, Agency contribution toward annual deductible would be $(4/12)*\$2,500=\833 .
- Employees who resign in the middle of a plan year will be required to refund the remaining prorated portion of the deductible. If based on other contract language the employee would be eligible for health insurance upon leaving, this statement would not apply.

H. If Teamsters Union does not agree to implement the above mentioned hospital/medical insurance plans within the required time frame to implement these plans, then the Agency's proposal is modified as follows:

- Implement above mentioned insurance plans effective January 1, 2011.
- Implement \$126.57 per month premium charge for each bargaining unit employee for a total of twelve (12) months.

The Teamsters propose the following provisions with respect to HSA funding:

Section G – HSA Funding:

- Employer to be responsible for a fund associated with HSA.
- Employer must maintain active and open HSA accounts.
- Rolling dollars in HSA account to the employee.
- Agency will allow pre-tax.
- Employer to make final deposit in a timely manner that will provide use of funds to each employee effective January 1 of each year.
- Employees hired mid-year—Employer responsible for full deductible.
- Employees who resign in mid-year are required to refund...(See Employer's proposal on their pending issues.)

GCCMH asserts that the HSA funding plan that it proposes is identical to that used by its AFSCME and non-union employees. Currently, the bank that maintains the HSA accounts for these employees charges no fees or maintenance costs. It argues that its proposal is more reasonable than the Teamsters' because it provides that deductibles will be prorated for new hires and employees who leave midyear.

The Teamsters urge recommendation of their proposal because GCCMH's proposal unfairly deprives new hires of access to an HSA account. The Teamsters argue that the issue of when GCCMH makes the contribution to the HSA accounts has been the subject of two grievances in two years. The Teamsters argue that employees who need to use their HSA funds immediately upon the new year should not have to wait for the employer to make its contribution.

Recommendation: It is recommended that the parties amend Article XVIII to adopt the HSA funding plan proposed by GCCMH, except that it should include the time limit proposed by the Union, "Employer to make final deposit in a timely manner that will provide use of funds to each employee effective January 1 of each year." In addition, the parties should include language that would guarantee to newly hired employees a prorated contribution, deposited in a timely manner, so that those funds would be available for use upon the first day of the newly hired employee's eligibility for benefits.

ARTICLE XXXIII: SALARY RATES

GCCMH proposes a wage freeze, maintaining step increases and longevity per current contract language for the duration of the contract (2 years).

The Teamsters propose the following:

- Add a new Step I to each pay scale at 3% higher than the H level.
- Delete Step 1 and rename "B-I" to "A-H."
- Provide employees with a signing bonus of \$500 paid effective October 1, 2009, and October 1, 2010.

The Teamsters assert that their members have not had a wage increase since October 2007, and point out that the nonunion employees received wage increases in 2007 and 2009. In addition, they state that the nonunion employees at the top of the wage scale received an increase, because an additional step was added to their wage scale, just as the Teamsters are proposing for their members.

The Teamsters contend that the employees at the top of the scale in St. Clair County and Clinton/Ingham/Eaton Community Mental Health are at a higher rate than those employees at the top of the GCCMH wage scale. The Teamsters point out that several nonunion employees were reclassified, resulting in significant wage increases since 2007. The Teamsters contend that the savings that result from the change in hospital/medical insurance would offset the raise they are seeking for their members. Finally, they argue that a signing bonus is appropriate, as GCCMH paid a \$500 bonus to nonunion and AFSCME employees.

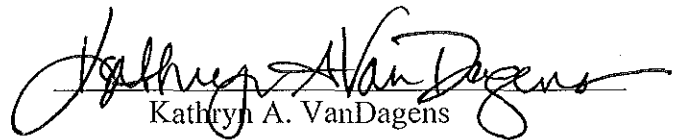
GCCMH asserts that anticipated funding limitations and budget cuts make the proposed wage increase and signing bonuses proposed by the Teamsters irrational. GCCMH explains that the wages of its AFSCME and nonunion employees will be frozen for fiscal years 2009-10 and 2010-11. In addition, it points out that Macomb and Saginaw Counties have also imposed two-year wage freezes. In addition, Macomb County eliminated longevity payments for 2010.

GCCMH asserts that no step was added to the nonunion wage scale, but in 2008, a previously deleted step was reinstated to the nonunion wage scale, resulting in steps "A" through "H", just as exists in the Teamsters' bargaining unit and the AFSCME bargaining unit. GCCMH asserts that if the Teamsters' proposal is accepted, this unit will be the only group of employees with nine steps on their wage scale.

GCCMH concedes that the jobs of some nonunion employees were reclassified, resulting in a higher wage for those employees, but points out that several employees positions in the Teamsters' unit were also reclassified. Further, GCCMH asserts, the reclassifications were in recognition of increased job responsibilities or a reevaluation of job responsibilities. GCCMH argues that the Teamsters' statement that "over half of the employees in non-union positions" received "reclassification changes resulting in pay increase," is a gross exaggeration.

Recommendation: It is recommended that the parties adopt a blended version of the parties' proposals for Article XXXIII: Salary Rates. Given the current economic situation, and the internal comparables, a wage increase to the top of the wage scale, with subsequent adjustments to the remaining steps, is not recommended. However, the parties should adopt the Teamsters' proposal to pay a \$500 signing bonus effective October 1, 2009, and October 1, 2010, to the members of the bargaining unit.

January 19, 2011


Kathryn A. VanDagens